

P-13

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN AND
FOR UTAH COUNTY, STATE OF UTAH.

Cause #2888.

Provo Reservoir Company,
a Corporation,
Plaintiff

vs.

Provo City, a Municipal
Corporation et al,
Defendants.

Amended Answer, Counter-claim
and Cross-complaint of Provo
City, a Municipal Corporation.

Now comes the defendant, Provo City a municipal Corporation,
under the Laws of the State of Utah and by leave of Court and stipula-
tion of Counsel First had and obtained, answers the complaint of the
plaintiff herein and admits, denies, and avers as follows to-wit:

1. This defendant admits the allegations in plaintiffs complaint
contained of paragraphs number 1 to 27 both inclusive.

2. Answering paragraphs 28, 29, 29a, 29b, 29c, and 29d, this
defendant alleges that it has no knowledge or information sufficient to
form a belief as to the matters therein alleged, and on that ground
denies the same.

3. Answering paragraph 29e, this defendant admits that plaintiff
claims the right to the whole of the water therein mentioned and
referred to and the right to the use of the same for irrigation purposes,
but denies each and every other allegation in said paragraph 29e contained.

4. That this defendant has no knowledge, information, or belief
sufficient to enable it to answer any or either of the allegations in
paragraphs numbered 30, 31, 32, 33, 38, and 39 in plaintiffs complaint
contained and therefore this defendant denies each and every allegation
of the same.

5. Answering paragraph 34 this defendant admits that plaintiff claims the right to store the ~~full~~ flood waters of Provo River in its alleged reservoir, and to release such quantities of water as will best serve the plaintiff and its stock-holders and lessees, and the right to comingle the said water with the natural flow of the waters of Provo River and to recapture the same at its diverting dam and at other points along the course of said river; but as to any right of the plaintiff to thus store said water or release the same this defendant denies.

6. Answering paragraph 35 of plaintiffs complaint, this defendant admits that it denies the plaintiffs right to the use of the water of Provo River as in plaintiffs complaint set forth, and that it denies the plaintiffs right to divert water from other sources or comingle the same with the waters of Provo river or recapture or use the same as claimed by plaintiff and that this defendant denies the plaintiffs right to store the flood waters of said river or to release or comingle said stored water with the waters of Provo river or to recapture the same and apply it to the use and purposes for which the plaintiff alleges that it stores said water; but denies that this defendant has at divers times, or at any time during the past two years diverted from said river or converted to its own use, waters the right to the use of which belong to or was or is property of plaintiff, or that the defendant threatened in violation of plaintiffs alleged right or any rights, of the plaintiff to continue so to do.

7. Answering paragraph 36 of plaintiffs complaint defendant denies that it has at any time or at all used any of the waters of Provo River wastefully, or used any quantity in excess of that necessary or beneficial, or in excess of its lawful right to the use of the same, or in excess of its lawful right and ownership of the same, and denies that any use of the waters of said river made by this defendant deprives the plaintiff or anyone else of their right to the use of the waters of said river.

8. Answering paragraph 37 of plaintiffs complaint this defendant admits the renditions of the decrees therein mentioned, and that in said decrees the waters of Provo River were decreed to the various users thereof; but denies that since the rendering of said decrees, by reason of high or flood waters being stored during the first part of the irrigation season in reservoirs or otherwise, the capacity of the waters of said river for irrigation or otherwise has been greatly or at all increased, or that large areas of land have been brought under cultivation, or that by reason of the storage of waters in reservoirs as alleged in plaintiffs complaint for use during the lower water season many or any persons not parties to said decrees have become interested in, or are now owners, of, the right to the use of some or any of the waters of said river for irrigation, culinary, domestic, or other purposes.

9. Further answering the complaint of the plaintiff herein this defendant denies generally each and every allegation thereof not hereinbefore specifically admitted or denied.

Further answering the complaint of the plaintiff by way of counter-claim against the plaintiff and cross-complaint against each and all other the other defendants this defendant alleges and shows to the Court:

1. This defendant alleges as a part of its counter-claim against the plaintiff and cross-complaint as to each and all of the other defendants each and every allegation contained in paragraphs numbered 1 to 26, both numbers inclusive of plaintiffs complaint herein, the same as if here set forth in full.

2. That this defendant is now and during and upon all the times hereinafter mentioned was a municipal corporation duly organized and existing under and by virtue of the laws of the State of Utah; that this defendant, Provo City, has a population of more than ten thousand people; that among other things said city is organized for the purpose of owning, controlling, regulating and distributing the waters of said river to which its inhabitants are entitled, and the waters of the several ditches and canals

and conduits flowing within, and flowing through its corporate limits; that the inhabitants of said Provo City and many persons within the immediate vicinity of the corporate limits of Provo City are the owners in severalty of large tracts of agricultural lands, homes, factories, and business industries within and without the corporate limits of Provo City, which said lands in their natural condition are barren and unproductive, and said homes uninhabitable, said factories and business industries inoperative, but when supplied with water said lands produce large crops of agricultural product, said homes are tenantable, and said factories and business industries operative at great profit; that for more than fifty years last past under and by virtue of statutory law and the power therein granted, and by the consent of its inhabitants and the persons living adjacent ~~thereto~~ to Provo City this defendant has owned, controlled, distributed, and regulated the waters of said Provo River used by the inhabitants of Provo city and persons living adjacent thereto, for irrigation, motive power, domestic and culinary purposes, in the proportion of the waters of said river to which its said inhabitants and persons living adjacent to its corporate limits, for said purposes are entitled.

3. That for more than fifty years last past, this defendant and its predecessors in interest by means of dams and intakes placed in the natural channel of said Provo river and in its tributaries, and by means of ditches, canals, and conduits, connecting therewith, constructed by Provo city and its predecessors in interest at great expense, have diverted and used the waters of said Provo river in Utah County, Utah, for agricultural, power, domestic culinary, and general municipal purposes in the proportion of the waters of said river to which they are entitled, and in the quantities hereinafter mentioned and set forth during each and every year of said time; and that the quantity of water so used has been necessary for the purposes above mentioned, the use thereof has been economical, without waste, and necessary, and that the continued use thereof is ~~essential~~ essential for the tillage of their lands, the operation and conducting of their factories

and business industries, the maintenance and enjoyment of their homes, and their material wellbeing and prosperity.

4. That during the high water stage of Provo River the quantity of water flowing therein is amply sufficient to fill all the canals, ditches, and conduits of this defendant, and all the other defendants in this action, to their full carrying capacity, as they now are, and have been constructed and maintained, and that during the high water stage of Provo River and until its volume becomes reduced in quantity to a volume less than sufficient to fill the canals, ditches, and conduits of this defendant and other defendants in this action, to their full carrying capacity as they now are and have been constructed and maintained, each of the defendants in this action is entitled to sufficient thereof to supply their reasonable necessities without any regulation or control as between themselves.

5. That when the quantity of water flowing in said Provo River at or near the mouth of Provo Canyon in said Utah County, becomes reduced in volume to a quantity not sufficient to fill the canals, ditches, conduits, of the parties defendant ~~hereto~~ taking water at or near the mouth of Provo Canyon in Utah County, to their full carrying capacity as they are now constructed, distribution of the water of said River among the parties to this action becomes necessary, and when the waters of said river become reduced to a quantity not sufficient to fill the canals, ditches and conduits of the parties defendant ~~heretox~~ taking water at or near the mouth of Provo Canyon, in Utah County, to their full carrying capacity as they are now constructed and have been maintained, and until the said river becomes reduced in quantity at or near the mouth of Provo canyon in Utah County, to a volume exceeding fifteen thousand cubic feet of water per minute, that is to say, after division so becomes necessary and while the water exceeds fifteen thousand cubic feet per minute, this defendant is entitled to the following proportion, to-wit, - .3489 of the total quantity of the waters of Provo River measured at or near the mouth of Provo Canyon.

6. That when the volume of water flowing in said river at or near the mouth of said Provo Canyon in Utah County, becomes reduced in quantity at said point to a volume not exceeding fifteen thousand cubic feet of water per minute, and until the same becomes reduced in quantity at said point to a volume not exceeding twelve thousand ~~cubi~~ feet of water per minute this defendant is entitled to .3859 thereof.

7. That when the volume of water flowing in said river at or near the mouth of said Provo Canyon in Utah County, becomes reduced in quantity at said point to a volume not exceeding twelve thousand cubic feet of water per minute, and from then on down to the lowest stage the volume of said river may reach at said point, this defendant is entitled to .3986 thereof.

8. That the rights of this defendant to the waters of Provo River and its sources of supply as hereinbefore set forth and alleged, appertain to, and are with reference to the natural flow of said river and were settled and confirmed by decree of ~~this~~ the district Court of the Fourth Judicial District of the State of Utah, in and for Utah County, made and entered on the 29th day of January, 1902, in that certain cause number 718, wherein Provo City, a Municipal Corporation, et al, were plaintiffs and the West Union Canal Company, a corporation et al, were defendants, and that said decree has never been modified, vacated, or appealed from; and that the alleged and pretended rights of the plaintiff herein to the use of the Waters of said Provo river, and its sources, if any rights the plaintiff have, were inaugurated since, and are subject to, the interest and rights of this defendant to the use of said waters as hereinbefore alleged.

8a. That the right of the defendant Provo City, to the waters of Provo River and its sources of supply as hereinbefore set forth and alleged includes the right to the use of the springwater arising in a certain ravine above the flume grade of the Utah Power & Light Company, and below the ditch known as the Johnson Ditch designated by Provo City in its notice of appropriation as the South Guard Quarter spring and all other springs arising in Provo canyon below the Utah Power & Light Co's flume grade and down the

Provo River from the county bridge crossing the same near the mouth of Bridal Veil Falls in said Provo Canyon, subject, however, to the right of the Utah Power and Light, Co., to use such water as it may require for domestic purposes from the spring arising on Lot 3, Section 33, Township 3 South, Range 3 East S. L. M. which said spring waters the defendant Provo City has the right to divert into a pipe line and carry the same through said pipe line for the use of the inhabitants of Provo City for domestic and other beneficial ~~xx~~ purposes, and which said rights to the use of said spring water were stipulated for, settled, and confirmed by a decree of the District Court of the Fourth Judicial District of the State of Utah, in and for Utah County, made and entered on the 26th day of January 1907 in that certain cause No 957 wherein Provo City a municipal corporation et al were plaintiffs and the Telluride Power and Transmission Co., et al were defendants and that said stipulation was on the part and behalf of the predecessors in interest of the plaintiff herein, and that said decree has never been modified, vacated or appealed from, and that this defendant is now the lawful owner of all the water of said springs and entitled to the use thereof for the purposes aforesaid.

9. That the plaintiff and each of the other defendants herein, as this defendant is informed and believes and therefore alleges the fact to be, assert and set up some claim or interest adverse to the ownership, title, interest, and rights of the defendant to the use of the waters of said Provo river and its several sources as claimed by this defendant, herein; but this defendant has not sufficient knowledge or information to enable it to set forth specifically the character or nature of said claim.

10. This defendant further avers that the several assertions, claims, and interests of the plaintiff and of each and all the other defendants made against this defendant are wrongful, without right, and unfounded, in fact or law, and are a cloud on this defendants title and right to the use, possession, ownership, and control of said water.

WHEREFORE, this defendant prays judgment that the plaintiff and each of the other defendants may be required to set forth any and every adverse claims, interest, or demand by them and each of them, in or to said waters so claimed, owned, used, and controlled by this defendant, to the end that their several adverse claims and pretensions and demands may be adjudicated and declared null and void as against this defendant; and that the title, ownership, interest, and right to the control therein of this defendant in and to said waters so claimed, owned, used, and controlled by it as herein set forth, may be quieted and confirmed as against the plaintiff and each of the defendants; and that the title, interest, ownership and right to the control of this defendant therein as herein set forth may be adjudged to be good and valid. This defendant prays for such other and further relief in the premises as to the Court may seem just and equitable and for its costs in this behalf expended.

Jacob Coleman & E. E. Corbinson
Attorneys for defendant, Provo City
a municipal corporation.

STATE OF UTAH

S.S.

COUNTY OF UTAH

H? J. W. Goddard, being first duly sworn on oath deposes and says: I am an officer of Provo City, a Municipal Corporation, to-wit a Commissioner thereof; that I have read the above and foregoing answer, counter-claim and cross-complaint and know the contents thereof; that the same are true of my own knowledge, except as to matters and things therein stated on information and belief and as to these I believe them to be true.

H. J. W. Goddard

Subscribed and sworn to before me this 26 day of January 1916.

Jacob Coleman
Notary Public.

Due and legal service of the foregoing amended answer, Counter-claim and Cross Complaint of Provo City, a municipal corporation, had and received and consent given to the filing thereof this 27 day of January, 1916.

Herb Evans
off counsel for Plaintiff